

October 15, 2014

**VIA LAWYERS SERVICE**

Honorable Paul A. Kapalko, J.S.C.  
Superior Court of New Jersey  
Monmouth County Courthouse  
71 Monument Park  
Post Office Box 1266  
Freehold, New Jersey 07728

**Re: Trinity Hall Corporation v. Township of Middletown, et al.**  
**Docket No. MON-L-2571-14**  
**Supplementary Letter Brief of the Township of Middletown on**  
**Plaintiff's Motion for Partial Summary Judgment**

Dear Judge Kapalko:

Please accept this letter in lieu of a more formal supplementary brief on behalf of the Township of Middletown ("the Township") in relation to the remaining issue that the Court asked the parties to address in the above-referenced matter governing severability.

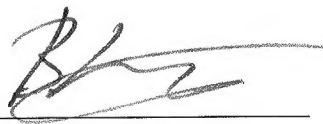
Notwithstanding the legal arguments presented in the Township's brief filed in August, the Township agrees with the Plaintiff that sections 1-4 and 16-311 of the Code of the Township of Middletown (1996) (hereinafter "the Code") allow for the severability of any specific sections or paragraphs that the Court may determine to be *ultra vires* or otherwise invalid while the remainder of the Code, sections or paragraphs thereof, survive. It is the Township's position that the Court cannot rewrite the Code for the Township, but it can render certain provisions of it invalid as a matter of law.

Given the applicability of the severability provisions contained in the Township's Code, and the fact that the Plaintiff is not challenging the entirety of the Township's conditional use standards (thereby potentially making the proposed use unpermitted), the Intervener's argument that this matter should be remanded to the Zoning Board of Adjustment is misplaced. Further, if based on the previous legal arguments presented by the parties, the Court renders the five paragraphs applied by the Planning Board under section 16-801 invalid, or the entirety of the section itself, the Township submits that the Plaintiff's application is effectively approved.

Accordingly, if the Court grants Plaintiff's motion and determines that section 16-801 is invalid (or the applicable parts thereof), the Court should also grant the Plaintiff's declaratory relief reversing the Planning Board's decision and approving its application without a remand to the Planning Board, which would be a waste of taxpayer time and money.

Respectfully submitted,

ARCHER & GREINER  
A Professional Corporation

By:   
Brian M. Nelson

cc: John A. Giunco, Esq  
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**TRINITY HALL CORPORATION,**

Plaintiffs,

**v.**

**TOWNSHIP OF MIDDLETOWN PLANNING  
BOARD and the TOWNSHIP OF MIDDLETOWN,**

Defendants.

SUPERIOR COURT OF NEW JERSEY  
LAW DIVISION  
MONMOUTH COUNTY

DOCKET NO.: MON-L-2571-14

Civil Action

**CERTIFICATION OF SERVICE**

I, Jacqueline Ostendorf, of full age, do hereby certify as follows:

1. I am a legal assistant employed by the law firm of Archer & Greiner, P.C., attorneys for Defendant Township of Middletown.

2. On Wednesday, October 15, 2014, I caused to be served an original and one (1) copy of a supplemental letter brief in reply to Plaintiff Trinity Hall Corporation's supplemental brief on its Motion for Partial Summary Judgment and Secretarial Certification of Service via Lawyers Service to:

Clerk, Superior Court of New Jersey  
Civil Division  
Monmouth County Courthouse  
71 Monument Park  
P.O. Box 1269  
Freehold, NJ 07728

Honorable Paul A. Kapalko  
Monmouth County Courthouse  
71 Monument Park  
P.O. Box 1266, 2<sup>nd</sup> Floor  
Freehold, NJ 07728

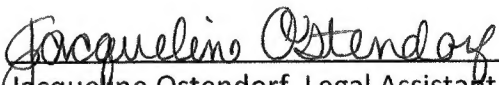
**With copies via email and regular mail to:**

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I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

  
Jacqueline Ostendorf, Legal Assistant  
**ARCHER & GREINER, P.C.**